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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 606

Case No. 646: PARAISO

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry;

Whereas, on 27 December 1991, Alide H. Paraiso, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 January 1992, the Applicant, after making the necessary corrections, again filed an application containing pleas which read, in part, as follows:

"...

(d) The Applicant requests the Tribunal to award damages for the loss sustained [because of the storage by the Administration of his personal effects and furniture for 11 years] namely:

(i) Loss resulting from prolonged storage: US$

- Replacement value	38 223
- Delay ($1,000 per year)	16 000
- Maritime transport of furniture Geneva/Cotonou	5 777
- Moral damage	5 000
Total (i)	65 000

(ii) Loss of career development

- Including smaller contributions to the Pension Fund/ adjusted amount	110 000
- Moral damage	20 000
Total (ii)	130 000

..."

Whereas the Respondent filed his answer on 12 February 1993;

Whereas the Applicant filed written observations on 10 March 1993;

Whereas the Applicant filed an additional document on 7 June 1993;

Whereas the facts in the case are as follows:

The Applicant, a Beninese national, entered the service of the United Nations Office at Geneva on 9 July 1961, as a Professional Trainee at the P-2 level in the Finance Division. From 1961 to 1975, he was assigned to six different duty stations, the last being Dakar. In September 1975, he was reassigned "temporarily" to Geneva as a Finance Officer. The Personnel Action Form implementing the assignment states: "Expected duration of assignment in Geneva: six months". However, the assignment was continuously extended until the Applicant's retirement on 31 May 1985. Throughout his service with the United Nations, the Applicant received successive promotions to the P-3 level, with effect from 1 July 1970, and the P-4 level, with effect from 1 April 1984.

When the Applicant was reassigned from Dakar to Geneva, he was not entitled to payment of the costs of removal of his personal effects and household goods, in accordance with staff rule 107.27(a) (i), (ii) and (iii) in force at the time, because the assignment was

temporary. According to the record, before the Applicant's departure from Dakar, the Administration arranged for packing and storage of the Applicant's personal effects in Dakar at the Organization's expense. The packing company, SIMAF, and the Applicant jointly prepared a list, dated 31 August 1975, of the items to be stored. This inventory list was handed over to the Administration of the United Nations/African Institute for Economic Development and Planning Office at Dakar.

As the Applicant's assignment to Geneva continued to be on a temporary basis, the Administration did not authorize the removal to Geneva of his personal effects and household goods stored in Dakar.

In a letter dated 20 May 1979, the Applicant requested the Secretary-General to review his administrative situation, namely, his non-assignment to a permanent post and his non-promotion to the P-4 level. Having received no reply, on 21 June 1981, he lodged an appeal with the Geneva Joint Appeals Board. In its report dated 10 August 1983, the Board recommended, inter alia, "that a review of the work situation of the Appellant should be undertaken with a view to making the best possible use of his experience acquired in twenty-two years of serving the United Nations as a Finance Officer".

On 28 November 1983, the Assistant Secretary-General for Personnel Services transmitted to the Applicant a copy of the report dated 10 August 1983, and informed him that:

> "(a) [The Secretary-General has decided] to take note of the report of the Geneva Joint Appeals Board which should be communicated to the Director, Division of Administration, UNOG [United Nations Office at Geneva], with a view to pursuing the Board's recommendation concerning your career development, and
>
> (b) to take no further action in your case."

During his assignment in Geneva, the Applicant resided at Ferney-Voltaire, France. The five-year period during which the

Applicant was entitled not to pay customs charges for importing his personal effects and household goods into France had expired in September 1980. Accordingly, the Administration decided to issue a travel authorization in Geneva, dated 14 September 1981, authorizing the removal of the Applicant's household goods from Dakar to Benin. However, the Administration of the United Nations Office at Geneva did not forward to Dakar a copy of the travel authorization and the Applicant's personal effects were mistakenly shipped to Geneva. When the Applicant was informed that his household effects had arrived in Geneva in December 1981, he immediately requested, on 5 January 1982, that they be shipped back to Cotonou, Benin, in conformity with the travel authorization that had been issued by the United Nations Office at Geneva.

From December 1981 to August 1986, the Applicant's household goods remained in storage in Geneva. The storage company Inter-Transports SA Genève, where they were stored, threatened to auction the shipment because no order had been received from the United Nations Administration to ship them back to Benin.

On 11 June 1981, the Applicant had requested the Secretary-General to review the administrative decision to recover from his salary any charges for storage of his household effects in Dakar. On 12 July 1981, the Applicant lodged a second appeal with the Joint Appeals Board, concerning payment of these storage charges. In a second report dated 10 August 1983, the Joint Appeals Board had concluded, inter alia, that "(iii) ... Financial losses suffered by the Appellant as a result of an administrative mistake [to extend his assignment allowance] should be borne by the United Nations and not by the Appellant, who ... acted with due diligence, as evidenced by the fact that he requested removal of his personal effects from Dakar to Geneva on 3 February 1981 ..." The Board recommended that the Applicant be reimbursed "any storage charges recovered from him for the period 1 September 1980-15 March 1981".

In February 1985, the question concerning the forwarding of the Applicant's personal effects and household goods was again raised by the Applicant who, on 1 March 1986, wrote to the Administration. Having received no reply, he wrote again on 5 May 1986 to the Secretary-General, requesting his intervention, and received from Headquarters a reply dated 15 May 1986, promising to examine his case.

In a memorandum dated 13 June 1986, the Purchase, Transportation and Internal Services Section recommended to the Administration of the United Nations Office at Geneva payment of the storage costs in Geneva of the Applicant's household goods and personal effects, and their transportation to his country of origin.

Eventually, the Administration shipped the goods to Cotonou, Benin, on the basis of an "Ordre de Transport" issued on 4 August 1986, and assumed payment of the storage costs in Geneva. The goods arrived in a damaged condition on 16 September 1986.

On 7 February 1987, the Applicant filed a compensation claim pursuant to administrative instruction ST/AI/149/Rev.2 of 17 February 1984 relating to compensation for loss of or damage to personal effects with the Geneva Claims Board, which decided to refer the matter to the Claims Board at Headquarters.

On 23 June 1988, the Director, Division of Administration, United Nations Office at Geneva, informed the Applicant that the Controller had approved the recommendation of the Headquarters Claims Board to pay an amount of US$ 5,303.80 as compensation for damage to the goods.

On 12 September 1988, the Applicant requested the Secretary-General to review this administrative decision. Not having received a substantive reply, on 11 November 1988, the Applicant lodged an appeal with the Geneva Joint Appeals Board claiming compensation of US$ 38,223. The Board adopted its report on 4 October 1991. Its conclusions and recommendations read, in part, as follows:

"Conclusions and recommendations

44. In view of the foregoing, the Panel unanimously:

(b) Concludes that the New York Claims Board's recommendation (...) should be reaffirmed ...;

(c) Then concludes that the Administration, as a consequence of its inadequate and improper handling of the Appellant's transfer in 1975, the storage, shipment and reshipment of his household goods between 1975 and 1986, as well as his employment situation between 1975 and 1981, had created years of uncertainty and mental anguish for the Appellant;

(d) Further concludes that the Appellant, albeit having at times not acted with diligence, cannot be held responsible for the Administration's actions mentioned above.

45. The Panel therefore respectfully recommends to the Secretary-General that:

(a) The Appellant be awarded an ex gratia payment of US$ 10,000 in accordance with financial rule 110.13. This amount takes into account the extended number of years involved and the total circumstances surrounding this case."

On 25 October 1991, the Director, Office of the Under-Secretary-General for Administration and Management, transmitted to the Applicant a copy of the Joint Appeals Board report and informed him, in part, that:

"The Secretary-General has re-examined your case in the light of the Board's report. He fully shares the Board's conclusion that the contested decision, taken on the recommendation of the Claims Board, should be reaffirmed ...

The Secretary-General has decided ... to maintain the contested decision. At the same time, in view, in particular, of the delay in rectifying the administrative error of the shipment of your effects to Geneva, he has decided to grant you compensation in an amount equivalent to one month of your net base salary at the time of your separation from service."

On 27 January 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's career development was prejudiced by temporary assignments between 1 September 1975 and 31 May 1985, resulting in the failure to be promoted to the P-5 level.

2. The damage caused to the Applicant's personal effects and household goods due to prolonged and wrongful storage requires compensation adequate to replace them.

Whereas the Respondent's principal contentions are:

1. The Applicant's claims for compensation for assignment to temporary posts between 1975 and 1985 are both res judicata and not properly before the Tribunal.

2. The Applicant has already been adequately compensated for the loss and damage to his personal effects and household goods.

The Tribunal, having deliberated from 11 to 30 June 1993, now pronounces the following judgement:

I. The Applicant, a national of the Republic of Benin, now a retired staff member, entered the service of the United Nations in 1961 and, after several transfers, was assigned to Geneva from Dakar, Senegal, in 1975. From that date until his retirement in 1985, he filled temporary posts although he had acquired the status of a permanent staff member at the P-4 level.

At the time of his departure for Geneva, since staff members occupying a post for a period of six months or less were not entitled, under the Financial Regulations in force in 1975, to the removal of their baggage, personal effects and furniture, those belonging to the Applicant were stored at Dakar by the Administration. Through an error on the Administration's part, they were sent to Geneva, and then forwarded to Cotonou, Benin, in 1986.

Because of their prolonged storage for 11 years and other circumstances, these goods arrived at their destination in a damaged condition.

The Applicant, having refused the Administration's offer of a lump-sum compensation, which he deemed insufficient and wanted to have increased, has submitted his case to the Tribunal.

II. In support of his pleas, the Applicant makes two major substantive arguments:

First, that the temporary assignments which he has had for 10 years, from 1 September 1975 to 31 May 1985, have prevented him from reaching the P-5 level, and that his career has suffered as a result. The Applicant further maintains that he should be compensated for the moral damage which he has suffered.

Secondly, that the damage caused to his personal effects and furniture by their prolonged storage and improper handling requires adequate compensation so as to enable him to replace them.

III. The Respondent requests the Tribunal to reject the Applicant's claims, maintaining, first, that his requests for compensation for the loss of his career development as a result of assignments to temporary posts from 1975 to 1985 are both res judicata and not properly before the Tribunal.

The Respondent further asserts that the Applicant has already obtained adequate compensation for the losses resulting from the damage caused to his personal effects and furniture.

IV. With regard to the Applicant's complaints relating to his career, the Tribunal notes that he instituted a proceeding before the Joint Appeals Board (JAB) in 1981. The JAB made a recommendation in its report of 10 August 1983, and the Secretary-General took a decision thereon. The Applicant did not submit his case to the Tribunal at that time. Consequently, any new claim relating to the Applicant's career is now time-barred, in accordance with the provisions of article 7, paragraph 2, of the Statute of the Tribunal.

V. With regard to the Applicant's request for compensation for the losses resulting from the damage caused to his baggage and furniture, the Tribunal notes that such damage is attributable to the bureaucratic delays which led to the prolonged storage. Moreover, through an error on the Administration's part, these effects were shipped to Geneva. Accordingly, the Respondent should be held responsible.

VI. The Tribunal notes, however, that the Applicant himself bears a share of responsibility for the unduly prolonged storage of his baggage, personal effects and furniture, which was partly caused by his refusal to take delivery of these goods in Geneva so as to avoid paying customs duties.

VII. In view of the special circumstances of the case submitted for review, the Tribunal considers that it is fair to compensate the Applicant for the losses suffered.

VIII. For the foregoing reasons, the Tribunal:

1. Declares that the Applicant's request for compensation for the loss which he claims to have suffered as a result of assignments to temporary posts from 1975 to 1985 is not receivable.

2. Orders the Respondent to pay to the Applicant a sum of US$25,000 as compensation for the damage caused to his personal effects and furniture, less any other amounts already collected on that account.

3. Decides to award the Applicant, for the moral damage resulting from the Administration's negligence with regard to his baggage and personal effects, a sum equivalent to one month's net salary, as of the date of his separation from service.

4. All other claims are rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

Geneva, 30 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary